

RAMON MURILLO,)	No. C 10-0584 JSW (PR)
)	
Plaintiff,)	ORDER GRANTING SUMMARY
)	JUDGMENT IN FAVOR OF
)	DEFENDANTS; GRANTING
v.)	REQUESTS TO FILE ADDITIONAL
)	EVIDENCE AND FOR JUDICIAL
)	NOTICE
CHARLES DUDLEY LEE, M.D., et)	
al.,)	
)	(Docket No. 62)
Defendants.)	
)	

Prior to filing this case, Plaintiff had filed a complaint in state court on October 4, 2006, for professional negligence, battery, and lack of informed consent against Defendants. *See Murillo v. Kuntze, M.D., San Luis Obispo Superior Court, Case No. CV 060845*. On April 4, 2011, while the state court trial was under way, this Court

1 granted summary judgment in favor of Defendants on Plaintiff's Eighth Amendment
2 claims. In the same order, the Court stayed Plaintiff's Fourteenth Amendment claim –
3 that Dr. Kuntze treated him without his informed consent – pending resolution of the
4 same claim in the state court action. *See Nakash v. Marciano*, 882 F.2d 1411, 1415
5 (1989) (“[A] federal court may stay its proceedings in deference to pending state
6 proceedings”). The Court reasoned as follows:

7 Under the Federal Full Faith and Credit Statute, 28 U.S.C. § 1738,
8 “a federal court must give to a state-court judgment the same preclusive
9 effect as would be given that judgment under the law of the State in which
10 the judgment was rendered.” *Migra v. Warren City School Dist. Bd. of*
11 *Educ.*, 465 U.S. 75, 81 (1984). Under California law, “a final judgment of
12 a state court ‘precludes further proceedings if they are based on the same
13 cause of action.’” *Brodheim v. Cry*, 584 F.3d 1262, 1268 (9th Cir. 2009).
14 California courts use the “primary rights theory” to decide what
15 constitutes the same cause of action for purposes of claim preclusion. *Id.*
16 Under California’s “primary rights theory,” a “cause of action is (1) a
17 primary right possessed by the plaintiff, (2) a corresponding primary duty
18 devolving upon the defendant, and (3) a harm done by the defendant
19 which consists in a breach of such primary right and duty.” *Id.* (quoting
20 *City of Martinez v. Texaco Trading & Transp., Inc.*, 353 F.3d 758, 762
21 (9th Cir. 2003)). If this cause of action test is satisfied, then the same
22 primary right is at stake, even if in the later suit the plaintiff pleads
23 different theories of recovery, seeks different forms of relief, or adds new
24 facts supporting recovery. *Id.*

25 Plaintiff’s state court action involves the same “primary right” as
26 his Fourteenth Amendment claim here. Plaintiff’s state court action raises
27 claims of negligence, battery, and lack of informed consent, and, like his
28 remaining Fourteenth Amendment claim, it involves the primary right to
informed consent to medical procedures. In both actions, Defendants are
alleged to have the corresponding duty to not infringe on that right. In
both actions, Plaintiff alleges that Defendants breached their duty to
Plaintiff based on the circumcision performed without his informed
consent.

Defendants were ordered to notify this Court when a judgment was reached in
Plaintiff’s state court case. Dr. Kuntze and Urology Associates have filed a request to
file new evidence, and for judicial notice, of state court documents showing that on
April 29, 2011, a jury returned a verdict in favor of the Dr. Kuntze and Urology
Associates on all of Plaintiff’s claims, finding that they were not negligent, that Dr.
Kuntze did not commit a medical battery on Plaintiff, and that Dr. Kuntze obtained
Plaintiff’s informed consent to treatment. (Defs.’ Req. Jud. Not. Exs. A-C). The

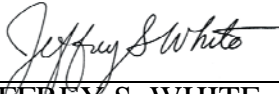
1 request is GRANTED. *See United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980)
2 (federal court may take judicial notice of court records).

3 For the reasons explained in the order of April 4, 2011, under the doctrine of
4 claim preclusion, the state court judgment denying Plaintiff's claim that Dr. Kuntze
5 treated Plaintiff without his informed consent precludes his Fourteenth Amendment
6 claim here that Dr. Kuntze treated him without his informed consent. Plaintiff's
7 Fourteenth Amendment claim against the other Defendants is premised on his claim Dr.
8 Kuntze did not obtain his informed consent, and consequently such a claim is precluded
9 by the state court judgment as well. As a result, summary judgment is GRANTED in
10 favor of Defendants on Plaintiff's Fourteenth Amendment claim.

11 The clerk shall enter judgment and close the file.

12 IT IS SO ORDERED.

13 DATED: July 15, 2011

14 
JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RAMON MURILLO,
Plaintiff,

Case Number: CV10-00584 JSW

CERTIFICATE OF SERVICE

v.

CHARLES DUDLEY LEE MD et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 15, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ramon Murillo
P43503
480 Alta Road
San Diego, CA 92179

Dated: July 15, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk